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31 **UNITED STATES DISTRICT COURT**
32 **NORTHERN DISTRICT OF CALIFORNIA**

33 CHASOM BROWN, WILLIAM BYATT,
34 JEREMY DAVIS, CHRISTOPHER
35 CASTILLO, and MONIQUE TRUJILLO
36 individually and on behalf of all similarly
37 situated,

38 Plaintiffs,

39 vs.

40 GOOGLE LLC,

41 Defendant.

42 Case No.: 4:20-cv-03664-YGR-SVK

43 **DECLARATION OF MARK MAO IN**
44 **SUPPORT OF PLAINTIFFS' RESPONSE**
45 **TO GOOGLE'S JULY 27**
46 **ADMINISTRATIVE MOTION (DKT.**
47 **642)**

DECLARATION OF MARK MAO

1 1. I am a partner with the law firm of Boies Schiller Flexner LLP, counsel for Plaintiffs
 2 in this matter. I am an attorney at law duly licensed to practice before all courts of the State of
 3 California. I have personal knowledge of the matters set forth herein and am competent to testify.
 4

5 2. I submit this Declaration in response to the Court ordering Plaintiffs to respond to
 6 Google's July 27, 2022 Administrative Motion (Dkts. 642, 647).
 7

8 3. The parties have engaged in numerous meet-and-confer sessions—with and
 9 without Special Master Brush—relating to their disputes over Google's preservation obligations.
 10

11 4. Plaintiffs since the outset of this case have repeatedly requested that Google
 12 preserve all data reflecting its collection, storage, and use of private browsing information.
 13

14 5. On March 14, 2022, Google for the first time proposed a sampling approach to
 15 preservation.
 16

17 6. On March 15, Google provided a written sampling proposal. On March 22, Google
 18 provided additional details regarding its proposal. None of Google's proposals in any way
 19 suggested that Google would encounter design or implementation challenges.
 20

21 7. All along, Plaintiffs objected to Google's proposal to preserve only sampled data,
 22 continuing to insist that Google preserve all data relating to its collection, storage, and use of
 23 private browsing data.
 24

25 8. Plaintiffs were not aware of the possibility of Google's design and implementation
 26 challenges (addressed in Google's July 27 Administrative Motion, Dkt. 642) until Google
 27 contacted Plaintiffs on July 26 to inform Plaintiffs of its intention to file that motion.
 28

29 9. Counsel for the parties met and conferred on July 27 before Google filed its
 30 Administrative Motion. During that meet and confer, Google's counsel represented that Google
 31 needed more time to design the preservation mechanism and even more time to conduct the
 32 backfill. Google did not identify any other issues with the Court-ordered preservation plan.
 33

34 10. During the meeting, Plaintiffs also asked Google how the relief Google is seeking
 35 impacts Google's preservation of data within the additional logs that contain Incognito-detection
 36

bits, as disclosed in Google’s June 14, 2022 Declaration of Martin Sramek. Dkt. 614-2. Google did not provide any response, stating that Google will address those logs in its August 18 opposition to Plaintiffs’ forthcoming August 4 request for additional sanctions. *See* Dkt. 624 (setting a briefing schedule for Plaintiffs’ forthcoming motion relating to the information disclosed in the June 14 Sramek Declaration).

11. On July 28, in connection with preparing their response to Google's Administrative Motion, Plaintiffs emailed Google nine follow-up questions relating to the substance of Google's July 27 Administrative Motion, including:

- a. When Google began its efforts to design what is described in its Motion;
 - b. How much time Google engineers have devoted to designing, testing, and implementing what is described in its Motion;
 - c. What resources are available, but have not been utilized, to assist with designing, testing, and implementing what is described in its Motion;
 - d. How Google determined the timelines for its requested extensions;
 - e. When Google identified other problems with complying with the Court-ordered preservation plan, like those with [REDACTED] and [REDACTED];
 - f. What Google has done to since investigate how it could resolve those problems;
 - g. How Google intends to sample the log sources to ensure the sampling relates to the same users, instead of different users, across the log sources;
 - h. Why Google is not saving all [REDACTED], particularly data related to the is_chrome_incognito Incognito-detection bit; and
 - i. Identifying any additionally responsive [REDACTED] that are not being saved that would otherwise be subject to Google's preservation obligations.

12. On July 29, Plaintiffs followed up on these requests, and counsel for Google responded merely to state that Google would provide written responses on Monday, August 1.

1 Plaintiffs then asked for Google to provide rolling responses prior to August 1 so that Plaintiffs
2 have time to consider Google's responses before filing their own response, due August 1.
3

4 13. As of this filing, completed after the close of business on the East Coast, Google
5 has not provided a response to any of Plaintiffs' questions.
6

7 14. Google has yet produced to Plaintiffs any of the data or encryption keys that Google
8 is required to preserve under the Court's May 20 Preservation Order (Dkt. 587), nor have any of
9 Google's experts addressed that data in their reports. Google has not provided any information to
10 Plaintiffs, formally through discovery or otherwise, regarding Google's sample-selection process.
11

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct.
14

15 Executed this 1st day of August, 2022, at San Francisco, California.
16

17 /s/ Mark Mao
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